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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,626	11/19/2003	Roger D. Cruttenden	RST929	4317

7590 09/09/2004
Sean A. Kaufhold
P.O. Box 131447
Carlsbad, CA 92013

EXAMINER

FULTON, CHRISTOPHER W

ART UNIT PAPER NUMBER

2859

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

27

Office Action Summary	Application No. 10/715,626	Applicant(s) CRUTTENDEN, ROGER D.	
	Examiner Christopher W. Fulton	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-9 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/19/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yantis in view of Shurtleff.

The device as claimed is substantially disclosed by Yantis with an elongated member 1 having a first end, a second end, a top side, a bottom side, a first lateral side and a second lateral side; an angle indicating assembly 9 being mounted in a circular opening in said elongated member and being positioned generally between said first and second ends; and angle indicia 18 being zeroed along a line orientated perpendicular to said top and bottom sides; said angle indicating assembly includes: a pair of transparent spaced walls 20 being mounted in said opening and being spaced from each other such that a compartment is defined between said spaced walls; a semi-circular disc 9 having an arcuate edge of 180 degrees and a straight edge, said disc having a front surface and a rear surface, a spindle being attached to and substantially bisecting said straight edge such that said front and rear surfaces are substantially parallel with respect to the spaced walls, and a pointer 10 attached to and extending upwardly away from the spindle, the pointer being perpendicular to the straight edge, the disk having a greater weight than the pointer,

but lacks said elongated member having a length from said first end to said second end greater than three feet, said angle indicating assembly being viewable on each of said first and second lateral sides, angle indicia being positioned on said first lateral side and extending around said opening, and said spindle extending between and being rotatably coupled to said spaced walls such that said spindle is positioned within said compartment.

Shurtleff teaches using an angle indicating assembly 3 being viewable on each of said first and second lateral sides, angle indicia 6 being positioned on said first lateral side and extending around said opening, and a spindle 14 extending between and being rotatably coupled to said spaced walls such that said spindle is positioned within said compartment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the angle indicating assembly 9 of Yantis viewable on each of said first and second lateral sides as taught by Shurtleff to reduce the number of parts needed for angle indication while still viewing the angle from either side of the device. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to move the angle indicia 18 of Yantis to the first lateral side and extending around said opening as taught by Shurtleff so the indicia would be closer to the user during use of the device. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spindle of Yantis extend between and being rotatably coupled to said spaced walls such that said spindle is positioned within said compartment as taught by Shurtleff as part of the move to a single angle indicator that can be view from either side of the device to use less parts in the device.

With respect to the specific length of the device claimed, the specific size of a device is not considered to be patentably distinct lacking some criticality. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the level of the combination of Yantis and Shurtleff more than three feet in length to provide the size level desired for the accuracy desired by the user.

3. Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yantis in view of Shurtleff as applied to claims 1 and 2 above, and further in view of Goldman.

The device as claimed is disclosed by the combination of Yantis and Shurtleff together as stated in the rejection recited above for claims 1 and 2, but lacks a sliding angle marker to provide an adjustable marker that can be placed at a desired angle to be obtained or recorded a measured angle.

Goldman teaches the old and well known use of a slide marker 22 to indicate or record a goal or desired location to obtain. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a slide marker in the combination of Yantis and Shurtleff as taught by Goldman to indicate or record the desired or measured angular inclination.

Allowable Subject Matter

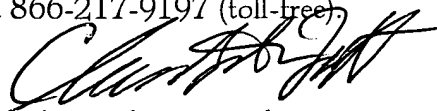
4. Claim 10 is allowed.

5. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton
Primary Examiner
Art Unit 2859

CWF